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ABSTRACT

The number of households hooked up to cable television or community antenna television (CATV) is expanding rapidly, and Federal Communications Commission (FCC) has been developing regulations since 1962 to guide the growth of the industry. By 1965 the FCC had claimed jurisdiction over all CATV systems in the U. S. This jurisdiction was challenged in 1968 and was reaffirmed by the Supreme Court. The same year the FCC proposed new rules regarding which signals could be carried on CATV in certain categories of broadcast markets. In October 1969 the FCC ruled that CATV systems with 3,500 or more subscribers must start originating a significant amount of programing within 18 months. In 1970 the FCC prohibited CATV ownership by telephone companies in their own service areas and by national TV networks. The same year the Commission established new rules about importing distant signals and began an inquiry into how regulatory authority over CATV should be divided among federal, state, and local government. (MG)

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Community Antenna Television (CATV)

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INFORMATION BULLETIN

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GENERAL

Community Antenna Television systems operate by picking up television signals, amplifying them and distributing them by cable to subscribers' television receivers for a fee. Most CATV systems offer subscribers between five and twelve channels although some systems now proposed may offer more.

In addition to offering a wider variety of programs than may be available over the air, CATV provides improved TV reception (especially for color TV) because it is not so readily affected by weather, distance from a transmitter, or topographical characteristics such as hilly terrain or high buildings. Larger CATV systems may also feature such specialized services as separate channels for weather, stock market reports, wire-service news, and FM radio, and some CATV operators have begun to originate their own programs.

Cable operators foresee their systems developing into two-way home communications centers through which subscribers may shop for merchandise shown on their screens, order fascimile newspapers, or have utility meters read. These and other potential uses of CATV are still being explored.

Community antenna television was started, in the late 1940's, in areas which were unable to get good TV reception because of terrain or because there were no television stations within range of their sets. Operated commercially, it provided improved reception for subscribers who paid a monthly fee.

In 1950, there were an estimated 70 CATV systems in the United States, serving approximately 14,000 subscribers. As of January 1, 1970, there were over 2,400 systems serving more than 4 million subscribers. As an indication of CATV's rapid growth, on January 1, 1968, there were some 2,000 systems serving only about 2.8 million subscribers.

CATV systems are presently concentrated in smaller communities and over half of the systems serve fewer than 1,000 homes each. But in large metropolitan areas where reception is an increasing problem because of the "canyons" created by tall buildings, the number of cable subscribers is steadily increasing.

The average CATV subscriber pays about $5 per month for service in addition to an initial installation charge. Installation charges can be as high as $175 but are generally in the $20 range. The largest CATV system in the United States has more than 35,000 subscribers.

REGULATION OF CATV

Initial Jurisdiction

CATV is a hybrid communications system; it has elements of broadcast service (particularly its capability to originate programing) and common carrier characteristics.

The Commission first exercised jurisdiction over CATV in 1962, establishing final rules in 1965 for those systems which received signals by microwave (microwave stations have always been FCC-licensed). In March 1966, the Commission adopted rules for all CATV, whether served by microwave or not.

Economic Considerations

The Commission considered the potential economic health of the existing and future TV broadcasting industry in setting standards for the regulation of CATV systems.

TV broadcasters contend that the importation of distant signals and the resultant duplication of programing tends to diminish their audience. Since advertising revenues are based on the number of viewers, such a reduction poses an economic threat. Broadcasters claim that the wider choice of channels and clearer reception discourages viewers from watching (and thereby supporting) the local service. In addition, broadcasters argue that CATV obtains an unfair competitive advantage since it is not presently liable for copyright payments. Such competition is threatening to drive small stations out of business and discouraging new ones from starting, broadcasters have maintained.

Second Report and Order

In drawing up its initial rules, therefore, in 1966 (Second Report and Order) the Commission required CATV systems to carry all local stations; prohibited them from duplicating, on the same day via signals originating in another city, a program broadcast by a nearby station; and specified that distant signals could not be brought into the top 100 TV markets without a hearing on the probable effect on local broadcasting.

In markets below the top 100, no restrictions were placed on the signals which a CATV system might bring in, but procedures were adopted permitting stations to challenge proposed operation. The purpose of these rules was to assure the establishment and healthy operation of the basic over-the-air television broadcast service.

Court Test

Challenged in the courts, the FCC cited its mandate under the Communications Act to regulate "interstate commerce by wire or radio." In June 1968, the Supreme Court affirmed the Commission's position.

The leading case (United States v. Southwestern Cable Co.) arose from an interim Commission order which limited the right of San Diego CATV systems to supply the programing of Los Angeles stations to new subscribers. The Court stated that "The Commission has reasonably concluded that regulatory authority over CATV is imperative if it is to perform with appropriate effectiveness certain of its other responsibilities." The Court held the FCC has authority over cable systems to assure the preservation of local television broadcast service and to effect an equitable distribution of broadcast services among the various regions of the country.

After adopting CATV rules, the Commission, in late 1966, created a CATV Task Force to administer them. By January 1970, the rapid growth of the CATV industry necessitated creation of the Cable Television Bureau charged with administering and enforcing the CATV rules, gathering information about the CATV industry and advising the Commission on CATV matters generally. The Bureau also licenses stations in the Community Antenna Relay Service (CARS), a group of private microwave radio facilities owned by CATV systems, which are used to relay TV and other signals to the other cable systems.

The Cable Television Bureau

Notice of Proposed Rule Making and Notice of Inquiry (Docket 18397).

Further Rulemaking

On December 13, 1968, the Commission invited comment on a proposed revision of its major market CATV rules. Under the proposed new rules, CATV systems located within the top-100 markets, and within 35 miles of a central reference point in the community or communities named in the market's designation, would be permitted to import distant signals without prior hearing or Commission approval, provided they had obtained retransmission consent from the distant station involved. The retransmission consent requirement would also apply to all local signals carried beyond the 35-mile zone of the top-100 market to within 35 miles of a second top-100 market.

CATV systems within the 35-mile zone of established stations or permittees in smaller markets would be permitted to carry such signals as needed to provide subscribers with three full-network services, one independent station, and any educational stations, provided the signals were obtained from the closest source in the system's State or region. Systems could carry additional distant signals with the retransmission consent of the distant stations involved.

CATV systems located beyond designated zones could carry as many distant signals as they wished, so long as they refrained from "leapfrogging", or carrying a more distant rather than a closer station of the same type (for example, a distant affiliate of the same network as that of a nearer station).

Interim Procedures

While the rulemaking proceeding was pending, interim procedures were adopted staying further proceedings in hearings concerned with distant signals in top 100 markets. Action was deferred on petitions or applications seeking service inconsistent with the proposed rules, but the Commission announced it would consider grant of a limited number of waivers to permit test operation with retransmission-consent within the 35-mile zone of a major market.

Cablecasting

CATV systems, in addition to supplying subscribers with the signals of broadcast television stations, also have the capability of providing programing of their own origination (cablecasting). In the First Report and Order in Docket 18397, adopted October 24, 1969, rules were issued requiring CATV systems with 3,500 or more subscribers to originate a significant amount of programing, effective April 1, 1971. CATV systems engaging in cablecasting may present advertising only at the beginning and conclusion of each cablecast program or at natural breaks within a program. Equal time, fairness, lottery, and sponsorship identification rules developed in the broadcast area have also been made applicable to cable-originated programs.

On June 23, 1970, in response to petitions for reconsideration of the First Report and Order, the Commission prohibited systems with more than 3,500 subscribers from entering into lease arrangements that would prevent their use of their cablecasting facilities for any substantial period of time, and thereby possibly inhibit the presentation of local programing designed to inform the public on controversial issues of public importance.

At the same time, "anti-siphoning" rules, patterned after those adopted for over-the-air subscription television service, were applied to CATV cablecasts for which an additional charge is made on either a per-channel or per-program basis. (No such rules apply if there is no separate charge.) These rules provide (with exceptions) that feature films more than two years old may not be shown, that sports events may not be shown if they were televised live on a nonsubscription basis in the community within the preceding two years, and that no "series" type of program, with interconnected plot or substantially the same cast of characters, may be shown. Additionally, advertising may not be contained in programing for which an extra charge is made, and no more than 90 percent of cablecast programing for which an extra charge is made may consist of feature films and sports.

Although no specific rules have yet been adopted, the Commission has sought to encourage CATV systems to make CATV channels available for public use, either free of charge or on a common carrier or contract basis. The interconnection of CATV systems for purposes of distributing nonbroadcast programing has also been encouraged.

The Commission's CATV origination rules were expressly intended to pre-empt and supersede all inconsistent State and local restrictions on CATV program origination. States and localities, however, remain free to impose additional affirmative obligations not inconsistent with Federal regulatory policies.

CATV System Ownership

In separate proceedings concluded in February (Docket 18509) and in June (Docket 18397) of 1970, the Commission prohibited CATV system ownership by telephone companies within their local exchange areas; by television stations within the same market; and by national television networks anywhere in the country and by television translator stations in the same community. The prohibition against telephone company ownership is designed to eliminate potential for anticompetitive and discriminatory practices made possible by the local telephone company's monopoly position in the community it serves, and its ownership of utility poles is ordinarily required for CATV system construction. This rule does not prevent telephone companies from owning CATV systems outside their local exchange area or from providing cable facilities (channel distribution service) on a lease or tariff basis for use by an unaffiliated system. The Commission's adoption of a rule prohibiting network, television station and translator cross-ownership of CATV systems took into account the growing role of CATV systems as program originators and was designed to insure vigorous competition among the mass media and to obtain for the public the greatest possible diversity of control over local mass communications media.

As part of its continuing concern with patterns of media ownership, the Commission issued an additional Notice of Proposed Rule Making (Docket 18891) to obtain views on whether CATV system ownership by radio stations and local daily newspapers should be prohibited. At the same time, the question was posed whether there should be an upper limit on the number of CATV systems owned by a single entity nationally or on a regional basis.

Electric Utility Pole Use Regulation

CATV systems are generally constructed by stringing coaxial cable on existing telephone company poles or poles owned by electric utility companies. CATV systems, alternatively, may set their own poles, place their coaxial cable underground or obtain transmission facilities from the local telephone company under tariffs filed with the Commission.

In January of 1970 (Docket 18509), the Commission adopted rules requiring that telephone companies, offering to provide CATV channel distribution service, also make available to CATV operators, pole attachment rights at reasonable charges and without undue restrictions on the uses that may be made of the cable attached to their poles

In March of 1970 the Commission instituted and investigatory rulemaking proceeding (Docket 16928) into the practices and policies of telephone and electric utilities companies and others in permitting CATV systems the use of their poles, and to ascertain what jurisdiction the Commission has over these policies and practices.

Microwave Auxiliary Facilities

CATV systems, in addition to providing subscribers with off-the-air signals also obtain signals, sometimes from hundreds of miles away, through microwave radio stations. Microwave relay service is available from common carriers in many areas, or CATV systems may prefer to operate their own relay stations licensed in the Community Antenna Relay Service (CARS). CAR shares the 12.7 to 12.94 GHz band with auxiliary facilities of television broadcast stations.

By Report and Order of November 7, 1969 (Docket 17999), CAR stations were authorized to carry CATV-originated programing. The CARS rules were further amended to authorize licensing of mobile remote pickup stations, for the transmission of programing from the scenes of events outside a studio back to the CATV studio or headend, and to provide for the licensing of studio-to-headend link stations.

In a separate proceeding (Docket 18425), concluded on November 7, 1969, the Commission adopted rules authorizing a CATV local distribution service in the CARS band. These rules contemplate local distribution stations within a CATV system, in place of cable, in order to relay program material from a central distribution point to multiple receiving sites within the system. The use of such a radio distribution system may facilitate expansion of CATV service to pockets of population not economically reached by cable alone, and may offer economies where overhead cable construction cost is prohibitive. The frequency assignment plan adopted makes possible the relaying of 38 television or equivalent channels for two-hop operation. In another proceeding (Docket 18838), rules were adopted to permit use of a frequency-division multiplexed FM emission system.

NEW PROPOSALS

Distant Signals

On June 23, 1970, in addition to adopting rules on CATV system ownership, the Commission proposed a series of new rules designed to advance the potential of CATV as a communications medium. In an effort to resolve the distant signal issue, and as an alternative to the zone approach of December 1968, the Commission proposed rules under which CATV systems would be permitted to carry four distant independent signals, in addition to local signals, providing

they deleted commercials from the distant signals and replaced them with commercials provided by local UHF stations. Commercial substitution would also be afforded to any local station able to demonstrate that its ability to serve the public had been threatened. As a condition to importing distant signals, systems in these markets would be required to pay five percent of their subscription revenues quarterly to public broadcasting. It would be necessary to dovetail such a proposal with copyright legislation providing a compulsory license at a set fee for each distant signal carried. The Commission suggested that it might act to set maximum local franchise fees in order to limit the operating cost increases from copyright and payment to public broadcasting. In smaller market and overlapping top-100 market situations, similar advertising substitutions might be required.

Additional Cable Services

The Commission also asked for comments on requirements that CATV systems, in addition to a channel for program origination, provide a channel for use without charge by local governments and for free political broadcasts during primary and general elections; a public access channel to permit local citizens and groups to present views on issues with which they are concerned; a leased channel, which would be available for commercial operation by third parties; and channels to be used expressly for educational purposes.

Technical Standards

On June 23, 1970 (Docket 18894), performance standards were proposed which, if adopted, will define precisely and in technical terms, minimum requirements for cable operation. Under the proposed rules, each CATV operator would be required to test the performance of his system at least once each year and file the results with the Commission. Also proposed for comment were requirements that systems have a minimum channel capacity; that each system have a two-way capability; that each system have available a separate channel for each distinct community within its franchised area; and that each community be equipped with production facilities for the programing of its community channel.

Federal, State and Local Regulation

On June 23, 1970, a rulemaking proceeding (Docket 18892) was commenced to determine how regulatory authority over CATV should be divided among the Federal, State and local levels of government. Because CATV systems, in addition to being subject to Commission jurisdiction, are also franchised and regulated by State and local governments, confusion has arisen over regulatory responsibilities. Comments were requested as to whether there should be Federal licensing of CATV; whether the present system should be continued or whether Federal standards for local regulators should be established. In order to eliminate

a potential burden on interstate commerce, and frustration of Federal policy, it was proposed that local governments not be permitted to set a franchise fee higher than two percent of a system's gross revenues.

Copyright Legislation

CATV systems do not pay copyright fees for the television broadcast programing which they supply to their subscribers. Although the Commission has no direct responsibilities under the copyright laws, it has been concerned with the competitive relationships between CATV systems, which receive the programing they transmit free, and television broadcasters, who must pay for the programing they transmit. The Commission has, accordingly, favored Congressional enactment of legislation which would take into account both the copyright and communications problems involved. In March 1970, the Commission expressed its opposition to one legislative proposal (S. 543) which specified the number of distant signals that might be carried. This opposition was based on the belief that the proposed legislation, in specifying which signals could be carried, was attempting to deal in too great detail with a dynamic and changing field. The Commission suggested as an alternative that legislation might simply bestow upon CATV systems a compulsory license, at a set fee for any signals the Commission by rule or order, might authorize the system to carry.

FEE SCHEDULE

In July of 1970 a revised fee schedule was adopted, designed to make the Commission, insofar as possible, financially self-sustaining by placing the burden of supporting the Commission's regulatory program on those subject to the Commission's jurisdiction, rather than on taxpayers generally. The schedule, in addition to setting fees for petitions and applications filed with the Commission on behalf of CATV systems, specified an annual fee of 30¢ per subscriber to be paid by every CATV system. Fees collected by the Commission are paid into the U. S. Treasury and are not available for use by the agency.

REPORTING REQUIREMENTS

In 1966, CATV systems were required to report, on a one-time basis, certain operational and ownership information to the Commission. In December of 1968, it was proposed that CATV systems file annual reports with the Commission. Using comments received under this proposal, three forms, covering CATV system ownership, program origination and financial data, were prepared and issued for comment.

In April of 1970, CATV systems holding franchises but not yet operational were directed to file copies of their franchises with the Commission.